IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSEPH HENSLEY,   )
        Plaintiff,   )
)   **C.A. No. 21-184 Johnstown**
)
      v.   )   **District Judge Susan Paradise Baxter**
)   **Magistrate Judge Richard A. Lanzillo**
JONATHAN MCCAULLEY, et al.,)_
        Defendants.   )

MEMORANDUM ORDER

Plaintiff Joseph Hensley, an inmate formerly incarcerated at the State Correctional Institution at Houtzdale, Pennsylvania,[1] initiated this *pro se* civil rights action on October 20, 2021. Plaintiff has since amended his complaint on two occasions, with his second amended complaint [ECF No. 76] being the operative pleading in this case. Plaintiff asserts claims under the first and eighth amendments to the United States Constitution against the following named Defendants: former Secretary of Corrections John Wetzel ("Wetzel"), SCI-Houtzdale Superintendent Barry Smith ("Smith"), and four other Pennsylvania Department of Corrections (DOC) employees staffed at SCI-Houtzdale: Unit Manager Jonathan McCaulley ("McCaulley"), counselor Kyle Boozer ("Boozer"), psychologist Brenda Lee Dubler ("Dubler"), and therapeutic activities worker Jason Bainey ("Bainey").

On August 30, 2022, Defendants filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief may be granted [ECF No. 90]. Despite being granted an extension of time to respond to Defendants' motion, Plaintiff failed to file a response.

1
Plaintiff is presently incarcerated at the State Correctional Institution at Huntingdon, Pennsylvania.

On January 25, 2023, Magistrate Judge Lanzillo[2] issued a report and recommendation ("R&R"), recommending that Defendants' motion to dismiss be granted [ECF No. 115]. Specifically, Judge Lanzillo found that Plaintiff has failed to allege the personal involvement of any Defendant in the deprivation of a constitutional right and has otherwise failed to state a cognizable claim upon which relief may be granted. Nonetheless, out of an abundance of caution, Judge Lanzillo has recommended that Plaintiff's claims be dismissed without prejudice to Plaintiff's right to amend his complaint to correct the deficiencies identified in the R&R within a reasonable period of time. Plaintiff has filed timely objections to the R&R; however, the objections fail to challenge any of the grounds for dismissal raised in the R&R, but merely state that Plaintiff has a learning disability and that his requests for counsel have been denied. [ECF No. 116].

After *de novo* review of the relevant documents in this case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 22nd day of February, 2023;

IT IS HEREBY ORDERED that Defendants' motion to dismiss [ECF No. 90] is GRANTED and all of Plaintiff's claims against the Defendants are DISMISSED, WITHOUT PREJUDICE to Plaintiff's right to file an amended complaint to correct the deficiencies identified in the R&R. If he desires to do so, Plaintiff must file his amended complaint **on or before March 24, 2023**, including all of Plaintiff's claims against all Defendants. **In the event**

2

This matter was originally assigned to Chief United States Magistrate Judge Cynthia Reed Eddy and was subsequently reassigned to United States Magistrate Judge Richard A. Lanzillo on September 21, 2022 [ECF No. 101]. The case was then assigned to the undersigned on October 4, 2022, and referred to Judge Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Plaintiff fails to file an amended complaint on or before March 24, 2023, the Court's dismissal of his claims against all Defendants will be converted to a dismissal <u>with prejudice</u>, and this case will be dismissed in its entirety, without further notice. The report and recommendation of Magistrate Judge Lanzillo, issued January 25, 2023 [ECF No. 115], is adopted as the opinion of the Court.

SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge

all parties of record